

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota by Stephen W.  
Cooper, Commissioner Department of  
Human Rights,

Complainant,

Vs

Hennepin County,

Respondent.

On July 25, 1990, Administrative Law Judge Peter C. Erickson issued an Order dismissing this matter with prejudice on the ground of laches. A motion for summary judgment had been filed by Janeen E. Rosas, Assistant County Attorney, 2000 Government Center, Minneapolis, Minnesota 55487, on behalf of the Respondent, Hennepin County. A response to the motion had been filed by Erica Jacobson, Special Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101, on behalf of the Complainant, Minnesota Department of Human Rights.

Complainant filed a Petition for Reconsideration or Rehearing on August 3, 1990, which is the subject of this Order.

NOTICE

Pursuant to Minn. Stat. 363.071, subd. 2, this Order is the final decision in this case and under Minn. Stat. 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. 14.63 through 14.69.

Based upon all of the records and files, the Administrative Law Judge makes the following:

ORDER

Complainant's petition for reconsideration and rehearing is hereby denied.

Dated this 20 day of August, 1990.

Judge

PETER C. ERICKSON Administrative Law

# MEMORANDUM

Subsequent to the issuance of the Order for Dismissal in this case, Complainant filed a Notice and Order for Rehearing and Petition for Reconsideration or Rehearing on August 3, 1990. This Notice and Petition merely restate the arguments already made and decided in this matter.

However,

Complainant now asserts that it needs to take depositions to support its contention that there was no actual prejudice due to the delay of time between the filing of a charge and issuance of a complaint by the Department. This request for discovery has now been raised for the first time. Complainant filed two responses to the Motion for Summary Judgement, one dated June 28, 1990 and a second dated July 16, 1990. Complainant did not make a request to take depositions or do other discovery in either of these submissions. Consequently, the judge decided the Motion for Summary Judgement based on the briefs and affidavits submitted by both parties. Complainant now asserts that it should have a second chance to make a record on the Motion.

Complainant filed its Motion for Reconsideration or Rehearing pursuant to Minn. Rule 1400.8300 which reads as follows:

Once a judge has issued a report, unless that report is binding on the agency, the judge loses jurisdiction to amend the report except for clerical or mathematical errors. Unless the report is a final order, binding on the agency, petitions for reconsideration or rehearing must be filed with the agency. Where the judge's decision is binding on the agency, a petition for reconsideration or rehearing shall be filed with the judge. A notice of and order for rehearing shall be served on all parties in the same manner prescribed for the notice of and order for hearing provided that the judge may permit service of the notice and order for rehearing less than 30 days prior to rehearing. The rehearing shall be conducted in the same manner prescribed for a hearing.

Reconsideration or rehearing is appropriate when any of the following have occurred:

- a. Irregularity in the proceedings whereby the moving party was deprived of a fair hearing;
- b. accident or surprise that could not have been prevented by ordinary prudence;
- c. material evidence newly discovered that with reasonable diligence could not have been found and produced at hearing; or
- d. fraud upon the hearing process.

ice, M.R.C.P. 59.01 and 60.02.

None of these factors is present herein. Rather, Complainant has only restated the arguments it made prior to the issuance of the Order for Dismissal.

Complainant contends that it should be permitted to take depositions in order to show that Respondent was not prejudiced by the delay in this case. That request should have been made, however, before the July 25, 1990 Order was issued too, M.R.C.P. 56.06. The Judge will not now reopen this proceeding to permit Complainant to more fully prepare to meet Respondents Motion for Dismissal. *Montgomery v. American Hoist-and Derrick Company*, 350 N.W.2d 405 (Minn. App. 1 984) ; *Boulevard Dell Inc. v. Stillman* , 343 N.W.2d 50 (Minn. App. 1984); *Dalco Corp. v. Dixon* , 338 N.W.2d 437 (Minn. 1983).

P.C.E.